



## City Auditor's Office

Carlos Lee Holt

**Date:** November 16, 2018  
**To:** City Manager  
**From:** City Auditor, Carlos L. Holt  
**Subject:** Hotline Complaint Message #W54237, CASE 2019-001

### Source of Allegations

The City Auditor's Office received a hotline complaint on August 17, 2018, concerning a property development at 622 NW 3<sup>rd</sup> Avenue, through the *InTouch* Hotline.

### Investigator Assigned

Carlos L. Holt, CPA, CFF, CIA, CFE, CGAP (Investigator)  
Emily Bowie, CPA (Quality Assurance)

### Purpose of Investigation

The purpose of this or any investigation is to determine the facts concerning allegations made by a complainant. For findings indicating possible fraud or other crimes, the matter would then be referred to the Gainesville Police Department (through the City Manager and in consultation with the City Attorney) or the State Attorney's Office. Findings of employee misconduct warranting possible corrective or disciplinary action would be forwarded to management, who is responsible for administering such actions. Findings of waste or lack of efficient or effective operations would also be referred to management.

### Standards

We conducted the investigation and created the report using the standards of the Association of Certified Fraud Examiners (ACFE) as a guide. The investigator is a Certified Fraud Examiner (CFE).

### Background

The complainant, Mr. Lee Malis, claimed that the City of Gainesville Department of Doing did not operate in an effective manner with regard to a property being developed at 622 NW 3<sup>rd</sup> Avenue, which is directly east of his residence. He claims the Department of Doing relied on faulty surveys, allowed the developer to understate tree size (resulting in smaller mitigation fees), and failed to

hold the developer responsible for improper notice of neighborhood workshop meetings. Further, that various departments of the City of Gainesville failed to take action to allow him to access the rear of his own property.

### Summary and Outcome of Investigation

Although the process was not entirely error free, the City of Gainesville Department of Doing took reasonable actions to correct errors made along the way. The property access matter in question, that continues to this time, is a civil matter regarding a strip of property between the two properties that the developer purchased, then Mr. Malis subsequently purchased from who he believed was a rightful co-owner (heir). The State of Florida is responsible for the regulation of mappers and surveyors and is considering two complaints filed by Mr. Malis concerning surveys related to this development.

### Allegations, Facts, Analysis and Conclusions

## **Allegations**

The City of Gainesville Department of Doing did not operate in an effective manner with regard to a property being developed at 622 NW 3<sup>rd</sup> Avenue, which is directly east of Mr. L. Malis' residence and property at 311 NW 7<sup>th</sup> Terrace. Specifically, Mr. L. Malis claims that the Department of Doing:

- a) Failed to hold the developer responsible, or stop the development process, for improper notice of neighborhood workshop meetings;
- b) Relied on obviously faulty surveys due to the size and location of a tree;
- c) Allowed the developer to understate tree size (resulting in smaller mitigation fees);
- d) Failed to take action, along with other departments, to allow him to access the back of his own property.

### ***Facts- (a)***

*Allegation (a): Failed to hold developer responsible for not making neighborhood workshop notifications*

- 1) On July 22, 2010, C & C Properties and Investments became effective as a Florida Limited Liability Company with Britton A. Jones listed as the sole member manager (MGRM) as per Sunbiz.org.
- 2) On February 6<sup>th</sup>, 2013, Lee Malis acquired the residential property at 311 NW 7<sup>th</sup> Terrace, Gainesville (Parcel ID 13641-000-000), Florida from Federal Home Loan Mortgage Corporation (Alachua County Property Appraiser).
- 3) C & C Properties and Investments acquired property at 622 NW 3<sup>rd</sup> Avenue (Parcel ID 13636-001-000) on November 1, 2017, from D. Dixson of Gainesville, Florida.

- 4) C & C Properties and Investments subsequently filed the necessary paperwork to develop the property at 622 NW 3<sup>rd</sup> Avenue, with the intention of building an 11 unit, 47 bedroom apartment complex to be named *The Reef Apartments*
- 5) Land Development Code section 30–3.45 classifies this size development (11 to 99 multi-family units) as an *intermediate* review level not requiring action by the Development Review Board unless a variance is requested.
- 6) City of Gainesville Land Development Code section 30–3.7 requires a Neighborhood Workshop be held. The purpose of the workshop is intended to encourage applicants to be good neighbors and to allow for informed decision making, although not necessarily to produce a complete consensus.
- 7) Requirements are for the notices to be mailed to those property owners with properties within 400 feet of the property being developed as well as all neighborhood associations within that area. Such notice shall be mailed at least 15 calendar days prior to the meeting with proper postage. A notice is also required to be published in the newspaper at least 15 calendar days ahead. No notice is required to be posted by signage at the development location.
- 8) Notices are addressed to the property owner currently listed by the Alachua County Property Appraiser using their contact address, which may be completely different than the actual property (even being out of state). Mailing labels are required to be furnished to the developer or their representative by the City of Gainesville.
- 9) It was noted that current practice is for the Department of Doing to furnish mailing labels to all property owners with properties within 400 feet (64 properties in this instance) and all neighborhood associations regardless of distance (currently numbering 83).
- 10) One neighborhood association representative stated that he was unsure why he received so many notices of neighborhood workshops that were miles away from his neighborhood.
- 11) Records show that both mailing lists of property owners (64) and neighborhood associations (83) were emailed by Department of Doing Planning Technician Michael Hoge on February 15, 2018, at 8:50 a.m. to A. J. Brown, Jr., PE, of J. Brown Professional Group.
- 12) A. J. Brown stated that they mailed notices on February 21, 2018, to both lists using the mailing labels supplied by the Department of Doing. Records also show a public notice was placed in the Gainesville Sun on Wednesday, February 21, 2018.
- 13) J. Brown Professional Group Executive Assistant Laurie Thomas stated in writing that they are 100 percent sure that the notices were mailed to all individuals on both lists (64) and (83) of mailing labels provided by the Department of Doing.

- 14) The neighborhood workshop was held on March 8, 2018, at 6:00 p.m. at Santa Fe College C.I.E.D. Center. The workshop ended at 6:45 p.m. according to required documentation.
- 15) The sign-in sheet shows that four citizens from the listings signed in (Vagnetti, Hardy, Malis, Faibisy), as well as the developer (Jones) and two J Brown Professional group employees (Brown, Peters).
- 16) Records show property owner (and complainant) Mr. L. Malis voiced concerns regarding the proximity of the proposed buildings to his existing home and yard with an emphasis on setback and landscaping requirements.
- 17) Mr. L. Malis subsequently notified City Commissioner Adrian Hayes-Santos on March 15<sup>th</sup>, 2018, that the map enclosed with the neighborhood workshop announcement showing where the development was located was incorrect, instead showing an area on NW 19<sup>th</sup> Street near 4<sup>th</sup> Avenue.
- 18) Mr. A. J. Brown, Jr., PE, of J. Brown Professional Group stated to the City Auditor on November 13, 2018, that one of his employees inadvertently enclosed the wrong map (of a previous development in the mailings (it is unknown if all of the mailings contained the incorrect map).
- 19) Department of Doing Planner Megan Echols subsequently notified Mr. L. Malis that she had notified the developer that the project could not move forward until another meeting was held after having been properly noticed by mail and newspaper again as required by code.
- 20) A close inspection of the documents furnished to the Department of Doing indicated that the correct map was included in their packet (however, at least some or all of the recipients received a different (incorrect) map for the March 8<sup>th</sup> meeting).
- 21) Mr. L. Malis contended that the low turn-out was due to the fact that property owners near the development would have little concern for a property development at NW 19<sup>th</sup> Street and NW 4<sup>th</sup> Avenue as shown on the incorrect map.
- 22) A. J. Brown Professional Group stated that again they noticed the listings by mail the second neighborhood workshop was to be held on April 26, 2018, at the same location as the first meeting.
- 23) Mr. A. J. Brown, P.E. and Executive Assistant Laurie Thomas stated in writing that they are 100 percent sure that the notices were mailed to all individuals on both lists of mailing labels provided by the Department of Doing.
- 24) The workshop was held as scheduled on April 6, 2018, at 6:00 p.m. and adjourned at 6:30 p.m. with two citizens attending (Lowe, Barr) and only one (Barr) providing documented comments.

- 25) An inspection of the sign-in sheet shows that one citizen attendee (Lowe) was from the labels of property owners in close proximity to the development, while the other attendee (Barr) was on the list of labels of the neighborhood association representatives.
- 26) Dotty Faisby (listed on the neighborhood association listing) provided a written statement on November 13, 2018, stating that she received the first meeting notice of the March 8, 2018, meeting and attended the meeting because she was unsure of where it would be located. Later she received the second notice of the April 6, 2018, meeting that had the correct address location on the map but did not attend.
- 27) Kim Kanemoto of *The Gainesville Sun* signed a sworn statement on April 10, 2018, stating that a public notice was published in the newspaper on March 22, 2018, about the April 6, 2018, neighborhood workshop.
- 28) Other property owners and neighborhood representatives (Saive, Barr) contacted on or about November 11, 2018, stated they remember receiving notices in the mail about the meeting(s) but after eight months are unsure if they received only the first one, only the second one, or both notices.
- 29) Mr. L. Malis stated repeatedly that he was never made aware of the April 6, 2018, meeting and furnished a listing of six residents who signed a statement to the effect that they did not receive notice of the second meeting. He stated that on July 20, 2018, he finally learned from Meghan Echols that the second meeting had already been held and felt "hoodwinked".
- 30) An inspection of the listing of the six citizens that stated they were not notified indicated that only two (Bass, Green) were on the listing of mailing labels to be notified, three (Davis, Franklin, Rumsey) resided outside the 400 feet noticed area to be included, and one (McMahon) condominium property was on the listing but under a different name (Salozzo<sup>1</sup>) although McMahon was listed by the Alachua County Property Appraiser. In summary, only two of the six were listed on mailing labels and intended recipients who stated to Mr. L. Malis, and signed his register, indicating they were not notified of the second April 6, 2018, meeting.
- 31) Mr. L. Malis stated on August 17, 2018, that he inquired with Department of Doing Planner Meghan Echols about when the second meeting was to be held but was not provided the information.
- 32) Planner Meghan Echols stated on November 8, 2018, that they do not normally keep up with all of the various neighborhood review meetings since it is up to the developer to comply and later provide certification and certain documents that show the meetings were held, who attended (sign-in sheet), participant comments, etc. It is not uncommon that that Planning will not know the exact time and date of some neighborhood workshops until

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<sup>1</sup> Solozzo was not listed for this property on any document with the Alachua County Property Assessor's web site, including previous owners. No other property in Alachua County could be found with this name.

they receive the certifications (the City Auditor found nothing in the Land Development Code that requires Planning to keep track of and dispense such information).

33) A review of the 64 property owner's address that are listed for notices indicates that 27 of 64 (42 percent) do not live in Gainesville.

34) Reference.com states that a close estimate of "undeliverable as addressed" USPS mail is 4.7 percent.

#### *Analysis (a)*

Mr. Malis' contention that notice of the second, make-up, neighborhood workshop was never noticed by mail is based on the fact that he and six others stated they never received the mailing, while only two of the six were on the mailing list, a total of three individuals counting him. On the other side, two individuals on the mailing lists (one from each list) actually attended the second workshop while another attendee of the first workshop stated in writing she received notice by mail of the second workshop.

It is unknown why some individuals such as Mr. Malis did not receive notice of the second meeting but it is also known that some individuals did receive the notice. The fact that 42 percent of the mailing label addresses are not in Gainesville likely results in many residences not receiving these type notices. Mr. Malis made inquiries to the planner who directed him to the developer, J. Brown, whom Mr. Malis already had contact information for since he received the first notice and attended the workshop. Mr. Malis did have his comments heard and recorded when he attended the first meeting.

The Department of Doing did take immediate action when they first learned of the improper map being included in the first mailing, which they would have had no way of knowing about since the developer performs the mailings. Additionally, the map received by the Department of Doing with the documents from the first workshop was the correct map. Meghan Echols did promptly notify the developer the workshop would have to be repeated before anything could proceed.

#### *Conclusion – Allegation (a)*

The allegation that the Department of Doing failed to hold the developer responsible, or stop the development, for improper notice of neighborhood workshop meetings is **unsubstantiated**.

#### ***Facts- (b)***

##### *Allegation (b): Reliance on faulty surveys due to size and location of a tree*

35) Mr. L. Malis stated that the Department of Doing relied on faulty surveys due to the size and location of a live oak tree.

36) Representation on the Alachua County Property Assessor web site show a strip of vacant property (Parcel ID 13636-003-000), approximately six feet in width, running the entire length of the property separating Mr. L. Malis' property at 311 NW 7th Terrace and the development property at 622 NW 3<sup>rd</sup> Avenue.

- 37) Survey drawings of the site by J. Brown Engineering in February 2018 show a sheet metal fence (that Mr. Malis had used as his unofficial property line) almost entirely within the vacant strip of property. The drawing states the fence consisted of sheet metal strips and other materials.
- 38) A May 2018 Survey drawing shows a 30 inch Live Oak Tree located entirely within the 622 3<sup>rd</sup> Avenue property.
- 39) Photos of the area prior to any demolition and land clearing show thick vegetation growth covering the entire area between the two properties and the tree trunk to be irregular shaped, not round in appearance.
- 40) Mr. Malis contacted the Department of Doing claiming a tree on the survey drawing they had showed the tree in an improper location and not of the correct size. Mr. Malis was very excited about saving the tree from being cut down.
- 41) Building Official John Freeland and Urban Forester Liliana Kolluri visited Mr. Malis' property to inspect his claims.
- 42) John Freeland stated that he did recognize the tree looked to be in a different location and of a different size as the survey drawing and contacted the developer about the issue, with the developer obtaining another survey.
- 43) Additionally, J. Brown Professional Group was retained by developer B. Jones to survey the strip of vacant property (Parcel ID 13636-003-000) and provided a September 7, 2018, Boundary Survey to Mr. B. Jones.
- 44) The Boundary Survey drawing shows the Live Oak tree to be 53 inches in diameter and located mostly within the 622 3<sup>rd</sup> Avenue Property (C&C/B. Jones) and partially within the vacant strip between the two properties.
- 45) Mr. L. Malis filed two complaints (#1810-43613 and #1810-46937) with the Florida Department of Agriculture and Consumer Services regarding surveys performed in conjunction with the above properties and received a reply for each complaint on October 23, 2018, stating they were looking into the matters.

*Analysis (b)*

Surveyors and mappers are regulated by the State of Florida in Florida Statute 472.001-472.037. Mr. Malis' complaints were accepted for investigation by the Florida Department of Agriculture and Consumer Services. Surveys are performed by licensed engineers and contain a seal and signature. The Department of Doing should not have to repeat survey work; however, in this instance, as soon as they learned that there may or may not be an error, they requested a new survey.

*Conclusion – Allegation (b)*

The allegation that the Department of Doing relied on faulty surveys is **unsubstantiated**.

***Facts- (c)***

*Allegation (c): Allowed a developer to claim a tree was a smaller size so as to lower the tree mitigation fee.*

- 46) Tax parcel drawings from 2018 provided by J. Brown Professional Group show a representation of a 30 inches diameter live oak tree entirely within the property being developed at 622 NW 3<sup>rd</sup> Avenue owned by C & C Properties (Mr. B. Jones).
- 47) Photos of the area prior to any demolition and land clearing show thick vegetation growth covering the entire area between the two properties and the tree trunk to be irregular shaped, not round in appearance.
- 48) Statements from Developer B. Jones on November 8, 2018, are that it was not possible to just walk up and measure the tree due to the extremely thick vegetative growth.
- 49) Photos of the area prior to demolition and site clearing also show that there was a make-shift fence of strips of sheet metal along the 311 NW 7<sup>th</sup> Terrace (Mr. L. Malis) property, highly overgrown with vegetation.
- 50) Landscape Architect Elizabeth Manley, PLA of Manley Design, LLC stated in writing that she performed a pre-development site walking review with Urban Forester Earline Luhrman on October 23, 2017.
- 51) A telephone discussion between the City Auditor and previous Urban Forester Earline Luhrman on November 8, 2018, revealed that Ms. Luhrman did not remember having walked that particular site but was not completely sure. She also indicated that site plan drawings are frequently incorrect as the exact size of tree diameter and are re-measured during process. She noted that tree sizes varied both larger and smaller than stated sizes.
- 52) A telephone discussion between the temporary Arborist/Urban Forester (period around February 2018) Erick Smith and the City Auditor on November 8, 2018, indicated that Mr. Smith recollected that the site review for the property in question was done prior to him playing any role. He also stated that the tree diameter size is determined by measuring the circumference and dividing by pi (~3.14159).
- 53) The Gainesville Sun news website carried a story on September 1, 2018, about the Oak Tree that was to be torn down and quoted Mr. L. Malis as saying the tree was located inside of his fence.

- 54) Mr. Malis created a Go Fund Me page on September 3, 2018 with a goal to raise \$5,000 for legal fees to save the oak tree.
- 55) The Gainesville Sun news website carried a story on September 6, 2018, that credited Mr. L. Malis and his supporters for persuading the developer to save the oak tree. Department of Doing Director Wendy Thomas was also quoted as saying the increase in tree mitigation fees as the size of the tree gets larger played a large role in saving the tree.
- 56) J. Brown Professional Group was retained by developer B. Jones to survey the strip of vacant property (Parcel ID 13636-003-000) provided a September 7, 2018, Boundary Survey showing the Live Oak tree to be 53 inches in diameter and located mostly within the 622 3<sup>rd</sup> Avenue Property (C&C/B. Jones) and partially within the vacant strip between the two properties.
- 57) Developer Mr. B. Jones paid an initial tree mitigation fee of \$17,000 for a 30 inch size tree, and then paid the larger fee (\$54,000) when he was informed that the tree was actually 53 inches in diameter.
- 58) Developer B. Jones subsequently decided to not cut the tree down and instead worked with the Department of Doing and J. Brown Engineering to redesign certain elements of the property in order to save the tree.

#### *Analysis (c)*

Photos of the area show thick vegetation growth and a make-shift sheet metal fence surrounding the tree. The tree is irregularly shaped. Both urban foresters and survey persons missed the size of the tree and possibly the locations. The Department of Doing ordered up a new survey and worked with the developer and engineer to redesign parts of the project. Mr. Malis was instrumental for spearheading the effort to save this heritage oak tree for the City of Gainesville; however, there was no wrongdoing by the Department of Doing to protect the developer.

#### *Conclusion – Allegation (c)*

The allegation that the Department allowed a developer to claim a tree was a smaller size so as to lower the tree mitigation fee is **unsubstantiated**.

#### ***Facts- (d)***

*Allegation (d):* The Department of Doing failed to take action, along with other departments, to allow Mr. Malis to obtain access to the back of his own property.

- 59) Records show that on August 29, 2018, PIA Properties LLC, a Florida Limited Liability Company LLC with developer Mr. B. Jones as MGRM, acquired the strip of property (Parcel # 13636-003-000) from Gaston T. Cook. The Alachua County Property Appraiser subsequently displayed the property transaction documents and the new ownership.

- 60) Records show that on September 28, 2018, Mr. L. Malis was issued a trespass notice by the Gainesville Police Department (Officer J.V. Gurrieri) for the development property at 622 NW 3<sup>rd</sup> Ave. and ordered not to trespass on the property for one year.
- 61) Developer B. Jones had a temporary construction fence installed along the edge of the property between the strip of land he purchased and the property of Mr. L. Malis.
- 62) Records show that on October 22, 2018, Mr. L. Malis received a “Warranty Deed” for tax parcel # 13636-003-000, which is the same strip of property that lies between his property and the development. The deed contains the statement that no title evidence was requested or furnished and that no opinion is intended as to the marketability or condition of the title.
- 63) On October 29, 2018, Mr. L. Malis claimed by email that he is now a co-owner of the strip of property. However, as of the date of this report, the Alachua County Property Assessor does not show Mr. L. Malis as an owner of that parcel.
- 64) Mr. B. Jones stated in writing on November 3, 2018, that his attorneys have advised him that they do not believe Mr. L. Malis has any title or rights to the strip of property.
- 65) Mr. L. Malis has made numerous requests by email to City Departments and City Commissioners requesting that the City of Gainesville get him access to the strip of property (# 13636-003-000) that he believes he owns. Mr. L. Malis faults the Department of Doing for not preventing Mr. B. Jones from putting a temporary fence with “No Trespassing” signs up surrounding the strip of property that Mr. B. Jones acquired and Mr. L. Malis later claimed title to.
- 66) Records show civil court cases have been filed by the two parties in this matter. Both parties have been working with their own attorneys. The Department of Doing or other City Department has no authority to insert their opinion on who owns or has access to the property. Additionally, the trespass order remains standing barring Mr. Malis from the development property.

#### *Analysis (d)*

The Department of Doing or other City Department has no authority to insert their opinion on who owns or has access to the property. Additionally, the trespass order remains standing barring Mr. Malis from the development property. Both parties (Malis and Jones) reaching out to the other party again thru their attorneys would be considered the most reasonable action.

### *Conclusion – Allegation (d)*

The allegation that The Department of Doing failed to take action, along with other departments, to allow Mr. Malis to obtain access to the back of his own property is **unsubstantiated**.

### **Recommendations**

- 1) The City of Gainesville should consider requiring signage at the property development locations for all neighborhood workshops, including those that do not require Development Review Board approval.
- 2) The Department of Doing should limit the neighborhood workshop mailing labels for neighborhood associations to only those required by the code within certain distances (rather than providing labels for associations or representatives located miles away).
- 3) Both Mr. L. Malis and Mr. B. Jones should consider reaching out again to the other party and professionally negotiating an end to this matter.

End of Report